

**CALIFORNIA INSTITUTE OF TECHNOLOGY
JET PROPULSION LABORATORY
GENERAL PROVISIONS:
ARCHITECT-ENGINEER SUBCONTRACT**

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GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

The following forms (located at <http://acquisition.jpl.nasa.gov/docs.htm>) are incorporated herein by reference into this Subcontract:

- Release of Information, Form JPL 1737 (Rev. 07/08)
- Notification to Prospective Subcontractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385 (Rev. 07/91)
- Certifications, Form JPL 2892 (Rev. ~~108/104~~)
- Asbestos Notification, Form JPL 2895 (Rev. 01/09)
- ~~Notice of Potential Tax Withholding (Rev. 07/03)~~

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ACCESS TO SENSITIVE INFORMATION

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, REL, RSA, T&MC – 10/10] [NFS 1852.237-72 6/05]

(a) As used in this clause, "sensitive information" refers to:

- (1) Information that a contractor has developed and marked as proprietary, confidential, or with a limited or restricted rights notice, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged;
- (2) Information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;
- (3) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; or
- (4) Information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.

(b) If performing this subcontract entails access to sensitive information, as defined above, the Subcontractor agrees to:

- (1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this subcontract, and not to improve its own competitive position in another procurement nor for any other purpose.
- (2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure using the same standard of care as the Subcontractor uses to protect its own confidential information, but under no circumstances less than a reasonable standard of care.
- (3) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.
- (4) Allow access to sensitive information only to those employees that need it to perform services under this subcontract.
- (5) Preclude access and disclosure of sensitive information to persons and entities outside of the Subcontractor's organization.
- (6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this subcontract and to safeguard it from unauthorized use and disclosure.
- (7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this subcontract.
- (8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, immediately report any breaches to the JPL Subcontracts Manager, and implement any necessary corrective actions.
- (9) Return to JPL or destroy all sensitive information, and copies thereof, no later than the effective date of the termination or expiration of this subcontract. Within thirty days of that effective date, the Subcontractor shall confirm in writing to JPL that all sensitive information received during the course of this subcontract has been returned or destroyed.

(c) The Subcontractor will comply with all procedures and obligations specified in any Organizational Conflicts of Interest Avoidance Plan incorporated into this subcontract.

(d) The nature of the work on this subcontract may subject the Subcontractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this subcontract establishes a high standard of accountability and trust, JPL will carefully review the Subcontractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this subcontract for default, in addition to any other rights and remedies available by law to the Government, JPL or other provider of sensitive information.

(e) The Subcontractor shall not be liable for the use or disclosure of sensitive information that the Subcontractor can demonstrate is: (1) in the public domain other than by a breach of this clause by the Subcontractor; (2) received by the Subcontractor from a third party without any obligation of confidentiality; (3) known to the Subcontractor without any limitation on use or disclosure prior to its receipt from JPL under this subcontract; (4) independently developed by the employees of the Subcontractor as evidenced by written documentation; or (5) generally made available to third parties by the originator of the sensitive information without restriction on disclosure.

(f) Unless otherwise specifically provided in this subcontract, no warranty, express or implied, including without limitation any warranty of accuracy, utility, merchantability or of fitness for a particular purpose, is provided hereunder for any of the disclosed sensitive information.

(g) The Subcontractor's obligations under this clause shall survive the expiration or termination of this Subcontract.

(h) Notwithstanding paragraph (b)(5), the Subcontractor may submit a written request to the JPL Subcontracts Manager for authorization to disclose sensitive information to its lower-tier subcontractors. If JPL authorizes the disclosure, the Subcontractor before making any such disclosure must include the substance of this clause, suitably modified to reflect the relationship of the parties, in any lower-tier subcontract that will involve access to sensitive information. The Subcontractor shall also require an acknowledgement in any such lower-tier subcontract that: (1) the corresponding clause is being included for the benefit of JPL as a third-party beneficiary, and (2) in addition to any other rights it may have, JPL is intended to have a right of direct action against the lower-tier subcontractor, or any other person to whom that subcontractor has released or disclosed that sensitive information, to seek damages for any breach and/or to seek enforcement of that clause in the lower-tier subcontract.

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AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-36 - 06/98]

(This Article applies to Subcontracts that exceed \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION SUBCONTRACTS

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, RSA, T&MC – 10/10] [FAR 52.223-2- 12/07]

(This Article applies to Subcontracts for services or construction, unless the subcontract will not involve the use of USDA-designated items at <http://www.usda.gov/biopreferred> or 7 CFR Part 2902.)

Incorporate by reference FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION SUBCONTRACTS

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, RSA, T&MC – 10/10] [FAR 52.223-17- 12/07]

(This Article applies to Subcontracts for services or construction, unless the subcontract will not involve the use of EPA-designated items.)

Incorporate by reference FAR 52.223-17, Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts.

ANTI-KICKBACK PROCEDURES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA, REL – 02/09] [FAR 52.203-7 – 07/95]

(a) Definitions.

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a Subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

- (3) "Prime contract," as used in this Article, means a Contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
 - (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
 - (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
 - (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
 - (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a Subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher-tier subcontractor.
 - (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a Subcontractor.
- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:
- (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a Subcontractor to a prime Contractor or higher tier subcontractor.
- (c)
- (1) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 - (2) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
 - (3) The Institute may (i) offset the amount of the kickback against any monies owed by the Institute under the Subcontract and/or (ii) direct that the Subcontractor withhold from sums owed a lower-tier Subcontractor, the amount of the kickback. The Institute may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to the Institute unless the Institute has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Subcontractor shall notify the Institute when the monies are withheld.
 - (4) The Subcontractor agrees to incorporate the substance of this Article, including this paragraph in all Lower-tier Subcontracts under this Subcontract which exceed \$100,000.

ARCHITECTURAL DESIGNS AND DATA - INSTITUTE AND GOVERNMENT RIGHTS

[A - E - 09/04]

The Government and the Institute may duplicate, use and disclose in any manner and for any purpose, and have others so do, all data, such as, for example, drawings, designs, specifications, architectural designs of buildings and structures, notes and other architect-engineer work produced in the performance of this Subcontract, or in contemplation thereof, and all as-built drawings produced after completion of the work, and without additional cost to the Institute or the Government; and with respect thereto the Subcontractor agrees to and does hereby grant to the Institute and the Government a non-exclusive, irrevocable, royalty-free license throughout the world for governmental purposes to use, publish, translate, reproduce, deliver, perform, dispose of, and authorize others so to do, all such data which the Subcontractor may cover by copyright and all architectural designs as to which it may assert any rights or establish any claim under the design patent or copyright laws. With regard to copyrighted material, any copyright license required in order to perform work under this Lower-tier Subcontract is freely transferable to any successor-in-interest of JPL, a successor Subcontractor to operate JPL, or the Government.

The Subcontractor shall use due care not to deliver or include in data produced or used in the performance of this Subcontract any copyrighted data not licensed hereunder without the prior written approval of the Institute and the Contracting Officer, unless it provides the written permission of the copyright owner for the uses specified herein. The Subcontractor for a period of three years after completion of the project agrees to provide access to all such data on the request of the Institute or the Government.

ASBESTOS NOTIFICATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 02/09]

(This Article applies if any of the Subcontract effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

Subcontractor acknowledges receipt of "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Subcontractor agrees to coordinate with the JPL Occupational Safety Program Office (OSPO) for special asbestos handling instructions to be given to all Subcontractor's personnel, including Lower-tier Subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all Lower-tier Subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

ASSIGNMENT, NOVATION AND TRANSFER

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, CIS, RSA- 09/04] [FAR 52.244-2 - 08/98]

This Subcontract may be assigned, novated, or transferred to a successor-in-interest, a successor Contractor to operate the Jet Propulsion Laboratory, or the Government.

ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.232-23(a) - 01/86]

- (a) The Subcontractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
 - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Subcontract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Subcontract.
 - (3) Two copies of the notice of assignment, signed by the Subcontractor, shall be furnished to JPL, Attn: Accounts Payable.
 - (4) If a party other than the Subcontractor provides JPL with a notification that the amount due or to become due under this Subcontract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Subcontract until JPL is furnished with either (i) verification or denial of assignment from the Subcontractor or (ii) reasonable proof that the assignment has been made.
 - (5) The Subcontractor shall not furnish or disclose to any assignee under this Subcontract any classified document (which term includes this Subcontract if access to classified material is authorized under this Subcontract) or information pertaining to classified work under this Subcontract unless JPL authorizes such action in writing.
 - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Subcontractor's duty to perform the services or provide the supplies required by this Subcontract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.

- (e) The Subcontractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Subcontract; provided, however, that nothing contained herein shall be deemed to prohibit the Subcontractor from placing purchase orders and Lower-tier Subcontracts, subject, however, to the provision of this Subcontract entitled "Lower-tier Subcontracts." Delegation of duties without such consent is void.

(c)

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AUDITS RECORDS – NEGOTIATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA –09/04] [FAR 52.215-2 – 06/99]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Subcontract, or any combination of these, the Subcontractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the Subcontract.

If this is a facilities acquisition, the obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this Subcontract.

- (c) Cost or Pricing Data. If the Subcontractor has been required to submit cost or pricing data in connection with pricing action relating to this Subcontract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to:
- (1) The proposal for the Subcontract, Lower-tier Subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the Subcontract, Lower-tier Subcontract, or modification; or
 - (4) Performance of the Subcontract, Lower-tier Subcontract, or modification.
- (d) Comptroller General.
- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this Subcontract or a Lower-tier Subcontract hereunder.
 - (2) This paragraph (d) may not be construed to require the Subcontractor or Lower-tier Subcontractor to create or maintain any record that the Subcontractor or Lower-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (f) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Subcontract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Subcontract. In addition:

- (1) If this Subcontract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Subcontractor shall make available records relating to appeals under the "Disputes" Article or to litigation or the settlement of claims arising under or relating to this Subcontract until such appeals, litigation, or claims are finally resolved.

(g)

- (1) The Subcontractor shall insert all of the provisions of this Article, including this paragraph (g), in all Lower-tier Subcontracts under this Subcontract that exceed \$100,000, and:
 - (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (B) For which cost or pricing data are required; or
 - (C) That requires the Lower-tier Subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.

- (h) If this is a cost-reimbursement Subcontract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Subcontract.

AUTHORITY OF JPL REPRESENTATIVES

[CT, FP-R&D, T&MC, LH/T&M, CREI, A – E, RSA – 09/04]

- (a) No request, notice, authorization, direction or order received by the Subcontractor and issued either pursuant to a provision of this Subcontract, to a provision of any document incorporated in this Subcontract by reference, or otherwise, shall be binding upon either the Subcontractor or the Institute unless issued or ratified in writing by the JPL Subcontracts Manager, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Subcontractor shall immediately notify, in writing, the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Subcontract amount or amount allotted to this Subcontract; or (iii) otherwise be the basis for assertion of a claim by the Subcontractor under any provision of the Subcontract.

AUTHORIZATION AND CONSENT

[CT, FP-R&D, T&MC, LH/T&M, CREI, A – E, RSA – 09/04] [FAR 52.227-1 – 07/95, ALT I]

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any Lower-tier Subcontract at any tier.
- (b) The Subcontractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all Lower-tier Subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this Article from any Lower-tier Subcontract, under or over \$100,000, does not affect this authorization and consent.

BANKRUPTCY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.242-13, 07/95]

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the Subcontract, written notification of the bankruptcy to the JPL Subcontracts Manager responsible for administering the Subcontract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL Subcontract numbers for all JPL Subcontracts against which final payment has not been made. This obligation remains in effect until final payment under this Subcontract.

CHANGES

[A - E – 09/04] [FAR 52.243-1, Alt. III – 04/84; FAR 52.243-6 – 08/87]

- (a) JPL may at any time, by written Unilateral Modification, and without notice to the sureties, if any, make changes within the general scope of this Subcontract in the services to be performed.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performing this Subcontract, whether or not changed by the Modification, JPL shall make an equitable adjustment in (i) the Subcontract price, the time of performance, or both; and (ii) other affected terms of the Subcontract, and shall modify the Subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the Modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Subcontract.
- (d) JPL may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Subcontractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Subcontractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.
- (e) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, JPL shall have the right to prescribe the manner of the disposition of the property.
- (f) Nothing in this Article shall excuse the Subcontractor from proceeding with the Subcontract as modified.
- (g) No services for which an additional cost or fee will be charged by the Subcontractor shall be furnished without the prior written authorization of JPL.

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A - E - 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Subcontractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefore, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph

(a) above by the Subcontractor or any of its Lower-tier Subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.

(c) Subcontractor agrees to insert this Article, including (c), in all Lower-tier Subcontracts and purchase orders hereunder.

CONTRACTUALLY REQUIRED NOTICES

[A - E - 09/04]

Unless otherwise specified in this Subcontract, any notice which the Subcontractor is required to provide to JPL under any provision of this Subcontract shall be directed to the Manager, Acquisition Division, JPL, or the Acquisition Division Manager's authorized representative.

DATA REMOVAL FROM COMPUTERS AND ELECTRONIC DEVICES

[CT, FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC, FPC, CREI, A-E, RSA - 02/09] [NPR 2810.1A - 05/06]

The Subcontractor shall archive all data required to be retained pursuant to the terms of this Subcontract (including, but not limited to, the General Provisions, Additional General Provisions, Alterations to General Provisions and Special Provisions). The Subcontractor shall completely sanitize (e.g., overwrite, degauss or destroy) all media containing data in all computers and other electronic devices and permanently delete all non-transferable licensed software before such computers or other electronic devices leave the control of the Subcontractor by transfer or disposal. All data, including computer software, provided by JPL, derived from JPL data, or owned by the Government or JPL pursuant to this Subcontract shall be permanently deleted from Subcontractor controlled computers or electronic devices before leaving the control of the Subcontractor. The Subcontractor shall submit to JPL a written certification that the above sanitization requirements have been satisfied and the date of such action.

DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.211-15 - 09/90]

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

DEFINITIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A - E, RSA - 02/09] [FAR 52.202-1 - 12/01]

As used throughout this Subcontract, the following terms shall have the meanings set forth below:

- (a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term "commercial component" means any component that is a commercial item.
- (c) The term "commercial item" means (see related term "non-developmental item," below):
 - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes and that:
 - (A) Has been sold, leased, or licensed to the general public; or
 - (B) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:
 - (A) Modifications of a type customarily available in the commercial marketplace; or
 - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if:
 - (A) Such services are procured for support of an item referred to in paragraph (c)1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services:
 - (A) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or supplier, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (B) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
- (8) A nondevelopmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (d) The term "component" means any item supplied as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11 (a).
- (e) Any reference to the "Contract Disputes Act" is meant to refer to the Disputes provision in this Subcontract, if any.
- (f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Subcontract, unless otherwise indicated.
- (h) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (i) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (j) The term "Institute" means the California Institute of Technology as a party to this Subcontract.
- (k) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. The rights of JPL under this Subcontract are the rights of the California Institute of Technology as a party to this Subcontract.
- (l) The term "JPL Subcontracts Manager" means the individual authorized to issue and administer this Subcontract for JPL.
- (m) The term "Lower-tier Subcontract," as used in this Subcontract, includes, but is not limited to, purchase orders under this Subcontract.
- (n) The term "NASA" means the National Aeronautics and Space Administration.
- (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Subcontract, unless otherwise indicated.
- (p) The term "nondevelopmental item" means:

- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.
- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (r) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government).
- (s) The term "Schedule" means the statements in the order/Subcontract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (t) The term "Subcontract amount" means the Subcontract price, the estimated cost and fee, if any, or the ceiling price of the Subcontract.
- (u) The term "Subcontractor" means the selling party to this Subcontract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Subcontractor" is the Lower-tier Subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (v) The terms "United States" or "U.S." mean the United States of America.

DRUG-FREE WORKPLACE REQUIREMENTS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.223-6 - 05/01]

The Subcontractor agrees to inform all Subcontractor personnel who work at JPL or are involved with any JPL activity on or off JPL premises that they are required to comply with the JPL "Drug Free Workplace Policy." The Subcontractor further agrees to inform all Subcontractor personnel, working at JPL or involved with any JPL activity on or off JPL premises that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Subcontractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

The Subcontractor shall institute and maintain a program for achieving a drug and alcohol-free workforce. As a minimum, the program shall provide for pre-employment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of subcontractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance.

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.222-37 - 12/01]

(This Article is applicable to this Subcontract (and any Lower-tier Subcontract) when the Article at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans is applicable.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, RSA, T&MC - 10/10] [FAR 52.223-15- 12/07]

(In this Article, the terms "contractor," "Government" and "Contracting Officer" are hereby replaced by the terms "Subcontractor," "JPL," and "JPL Subcontracts Manager" respectively.)

Incorporate by reference FAR 52.223-15, Energy Efficiency in Energy-Consuming Products.

ENVIRONMENTAL COMPLIANCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.223-11 - 05/01; 52.223-12 - 05/95]

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(This Article is applicable to all Subcontracts to be performed at least partially within the United States, its possessions, and Puerto Rico.)

(a) Environmental Compliance. Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the Subcontractor shall comply with the provisions set forth below.

(b) The Subcontractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C.7671g and 7671h) as each or both apply to this Subcontract.

(c)

(1) Definition. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency (EPA) designates in 40 CFR Part 82 as: (i) Class I, including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (ii) Class II, including, but not limited to, hydrochlorofluorocarbons.

(2) The Subcontractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) (*)_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(* The Subcontractor shall insert the name of the substance(s))

EQUAL OPPORTUNITY

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-26 – 04/02]

(The following Article is applicable unless this Subcontract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees who were not recruited within the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Subcontract], the Subcontractor has been or is awarded nonexempt Federal Subcontracts and/or Lower-tier Subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with FAR 52.222-26 during performance of this Subcontract. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-35 - 12/01]

(This Article applies to Subcontracts of \$25,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

FACSIMILE AND ELECTRONIC COPIES ACCEPTABLE

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – ~~109/104~~]

The parties ~~agree- agree that facsimile (fax) and electronic copies of image file formats in .PDF, .TIFF, .JPG, .BMP, and .GIF of subcontract documents electronically submitted are just as binding as originally executed documents, that facsimile (fax) copies of Subcontract documents are just as binding as originally executed documents.~~

FEDERAL, STATE, AND LOCAL TAXES

[FP-NR&D, FP-R&D, FPC, A – E – 09/04] [FAR 52.229-3 – 04/03]

(a) Items of tangible personal property to be delivered under this Subcontract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).

(b) FAR 52.229-3 is hereby incorporated by reference, except that the letters "JPL" shall be substituted for the words "the Contracting Officer" and the words "the Government" wherever they appear.

GOVERNMENT PROPERTY

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A - E - 09/04] [FAR 52.245-4 -06/03]

- (a) JPL shall deliver to the Subcontractor, at the time stated in the Schedule, or, if not so stated, in sufficient time to enable the Subcontractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, JPL shall equitably adjust affected provisions of this Subcontract in accordance with the Changes Article when:
 - (1) The Subcontractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Subcontractor shall use the JPL-furnished property only in connection with this Subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except:
 - (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this Subcontract; or
 - (3) As otherwise provided for by the provisions of this Subcontract.
- (d) Upon completing this Subcontract, the Subcontractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Subcontract or previously delivered to JPL. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid as directed by JPL.
- (e) If this Subcontract is to be performed outside the United States and its outlying areas, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.
- (f) If JPL-furnished property has been provided to the Subcontractor under this Subcontract, the Subcontractor shall submit NASA Form 1018, "The Report of Government-Owned/Subcontractor-Held Property" (or equivalent) (or a negative report, if applicable); to JPL monthly and annually (date to be determined by JPL).

INJURY AND ILLNESS PREVENTION PROGRAM

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04]

All Subcontractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

INSURANCE AND INDEMNIFICATION – A - E

[A - E - 09/04] [FAR 52.228-5 - 01/97]

- (a) Insurance. The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this Subcontract at least the following kinds and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.
 - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Subcontract operations are so commingled with the Subcontractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Subcontractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Subcontractor is qualified pursuant to statutory authority to do so.

- (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
- (3) Professional Liability. The Subcontractor agrees that it will be responsible to the Government and the Institute for, and indemnify and hold harmless the Government and the Institute, its trustees, officers and employees from, any loss, cost, damage, expense or liability or any suit or claim therefore, by reason of breach of professional duty, arising out of or in connection with the performance of this Subcontract, occasioned in whole or in part by the error, omission or negligent act of the Subcontractor, its employees or agents. The Subcontractor will at all times carry such professional liability insurance as will protect it from the foregoing risks with an insurance carrier and in a form satisfactory to the Institute and in an amount of not less than \$1,000,000, unless a lesser amount is specified in the Schedule of this Subcontract.
- (b) Insurance Certificates and Endorsements. Before commencing work under this Subcontract, the Subcontractor shall furnish (i) certificates of insurance for the coverages specified in (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the Subcontract for the coverage specified in (a)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (ii) until 30 days after the insurer or the Subcontractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Subcontract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Subcontractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Subcontractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Subcontractor.
- (c) Indemnification. The Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefore, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Subcontractor or any of its Lower-tier Subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.203-12 - 06/97]

(This Article applies if this Subcontract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

LOWER-TIER SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS

[A - E - 09/04] [FAR 52.244-4 - 08/98]

Any Lower-tier Subcontractors and outside associates or consultants required by the Subcontractor in connection with the services covered by the Subcontract will be limited to individuals or firms as are specifically set forth in the Schedule of this Subcontract. The Subcontractor shall obtain JPL's written consent before making any substitution for these Lower-tier Subcontractors, associates, or consultants.

LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.244-6 - 05/02]

(a) Definition.

- (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
- (2) "Lower-tier Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or Lower-tier Subcontractor at any tier.

(b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its Lower-tier Subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Subcontract.

(c)

(1) The Subcontractor shall insert the following clauses in Lower-tier Subcontracts for commercial items:

- (i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2)(3)), in all Lower-tier Subcontracts that offer further Lower-tier Subcontracting opportunities. If the Lower-tier Subcontract (except Lower-tier Subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the Lower-tier Subcontractor must include 52.219-8 in lower tier subcontracts that offer Lower-tier Subcontracting opportunities.
- (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
- (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
- (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Subcontractor may flow down to Lower-tier Subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

~~(d)~~ The Subcontractor shall include the terms of this Article, including this paragraph (d), in Lower-tier Subcontracts awarded under this Subcontract.

(d)

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METHOD OF PAYMENT

[A - E - 09/04]

- (a) Estimates shall be made monthly of the amount and value of the work and services performed by the Subcontractor under this Subcontract that meet the standards of quality established under this Subcontract. The estimates shall be prepared by the Subcontractor and accompanied by any supporting data required by JPL.
- (b) Upon approval of the estimate by JPL, payment upon properly executed vouchers shall be made to the Subcontractor, as soon as practicable, of 90% of the amount, less all previous payments. Also, whenever JPL determines that the amount retained is in excess of the amount adequate for the protection of the Institute, JPL may release the excess amount to the Subcontractor.
- (c) Upon satisfactory completion by the Subcontractor and acceptance by JPL of the work done by the Subcontractor under this Subcontract, the Subcontractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work.
- (d) JPL may elect to either send payments to the Subcontractor by mail or require the Subcontractor to accept electronic payments. Payment shall be deemed to have been made on the date the check is mailed or the date of payment by electronic funds transfer.
- (e) Before final payment under the Subcontract, or before settlement upon termination of the Subcontract, and as a condition precedent thereto, the Subcontractor shall execute and deliver to JPL a release of claims against the Institute arising under or by virtue of this Subcontract, other than any claims that are specifically excepted by the Subcontractor from the operation of the release in amounts stated in the release.
- (f) If the Subcontractor fails to return the release described in (d) above with the release either executed for the amount determined by JPL or with a different amount within 60 days of JPL's request, JPL may make final payment in the amount determined by JPL and the release (for the JPL-determined amount) described in (d) above will be deemed to have been executed and delivered by the Subcontractor.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.227-2 - 08/96]

(The provisions of this Article shall be applicable only if the amount of this Subcontract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Subcontractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Subcontract or out of the use of any supplies furnished or work or services performed under this Subcontract, the Subcontractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor agrees to include, and require inclusion of, this Article in all Lower-tier Subcontracts at any tier for supplies or services (including construction and architect-engineer Lower-tier Subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

NOTICE TO JPL OF LABOR DISPUTES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.222-1 - 02/97]

- (a) If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subcontract, the Subcontractor shall immediately give notice to JPL. The initial notice shall include the following:
 - (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a Lower-tier Subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
 - (6) Manufacturer/Lower-tier Subcontractor and union data to include:
 - (A) Name, address and telephone numbers of the manufacturer/Lower-tier Subcontractor representative and Industrial Relations Representative to be contacted for further information;
 - (B) Union's name and local lodge number, if known.
If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.
 - (C) The Subcontractor agrees to insert the substance of this Article, including this paragraph (b), in any Lower-tier Subcontract to which a labor dispute may delay the timely performance of this Subcontract; except that each such Lower-tier Subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Lower-tier Subcontractor shall immediately notify the next higher-tier Lower-tier Subcontractor or JPL, as the case may be, concerning the dispute.

NOTIFICATION OF OWNERSHIP CHANGES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A - E, CREI- 09/04] [FAR 15.215-19 10/97]

(This Article is applicable if it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2)

- (a) The Subcontractor shall make the following notifications in writing:

- (1) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify JPL within 30 days.
 - (2) The Subcontractor shall also notify JPL within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Subcontractor shall:
- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide JPL or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.
- (c) The Subcontractor shall include the substance of this clause in all Lower-tier Subcontracts under this Subcontract that meet the applicability requirement of FAR 15.408(k).

ORDER OF PRECEDENCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.215-8 – 10/97]

- (a) The rights and obligations of the parties of this Subcontract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
 - (1) The Alterations Article.
 - (2) The GPs not altered.
 - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
 - (1) The Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise, in the Schedule, and
 - (2) Any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise in the Schedule,
 - (3) (c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Subcontract that are required by their terms to be included in Lower-tier Subcontracts shall be required by the Subcontractor to take precedence in the Lower-tier Subcontract over any other provisions.

PREFERENCE FOR U.S.-FLAG AIR CARRIERS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.247-63 – 01/97]

(This Article does not apply to Subcontracts or Lower-tier Subcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

PRINTING AND DUPLICATING

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, A - E – 09/04] [NFS 1852.208-81 – 10/01]

(This Article does not apply unless this Subcontract requires the Subcontractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), is hereby incorporated into this Article in its entirety.

Note 1: The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) of NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office, even though the distribution of these reports and materials may be effectuated by the Subcontractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Subcontractor or a Lower-tier Subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports, but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any Subcontractor or a Lower-tier Subcontractor such as JPL's or a Subcontractor's Telephone Directory or JPL's or a Subcontractor's internal newsletter; (ii) public information, education and public service documents, and award certificates printed for JPL's or a Subcontractor's usage rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical, or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL, Subcontractor, or Lower-tier Subcontractor representatives, where Government attendance is only incidental, and the Subcontract does not expressly require Government approval of the proceedings.

- (b) To the extent that it applies to Lower-tier Subcontractors, the Subcontractor will implement NASA Policy Guideline (NPG) 1490.5A, Procedural Guidance for Printing, Duplicating and Copying Management, for all printing, duplicating, copying, forms, and mail management related to the performance of this Subcontract.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Subcontractor to the JPL Subcontracts Manager for submission to the NASA Printing Management Officer through the Contracting Officer.

PROHIBITION OF SUBCONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN SUBCONTRACT PERFORMANCE

[CT, FP-NR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04]

The Subcontractor, its employees, agents and Lower-tier Subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Subcontract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Subcontractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence. The Subcontractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Subcontractor shall include this provision in any Lower-tier Subcontract involving travel subject to JPL approval or requiring that the Lower-tier Subcontractor utilize a privately owned (noncommercial) aircraft.

PROHIBITION OF SEGREGATED FACILITIES

[CT, FP-NR&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E – 09/04] [FAR 52.222-21]

(The following Article is applicable to Subcontracts where FAR 52.222-26, Equal Opportunity is applicable)

Incorporate by reference FAR 52.222-21, Prohibition of Segregated Facilities

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RELEASE OF INFORMATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 02/09]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Subcontractor agrees that all information released by the Subcontractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, and advertising copy) directly related to the Subcontractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See form JPL 1737, "Release of Information.")
- (b) The Subcontractor agrees to insert this clause including this paragraph in all Lower-tier Subcontracts.

RELEASE OF INFORMATION - PRELIMINARY ENGINEERING REPORT (PER) SUBCONTRACTS

[A - E – 02/09]

(This Article applies only if this Subcontract requires the Subcontractor to prepare a Preliminary Engineering Report [PER] and supersedes the Article entitled "Release of Information.")

The Subcontractor agrees not to make, or cause to be made, or permit any of its Lower-tier Subcontractors to make, any public disclosure whatsoever relative to this Subcontract or any Lower-tier Subcontract (including any information generated there under), without first submitting three copies of the text of such planned disclosure to JPL to the attention of the Subcontracts Manager and awaiting receipt of written approval from JPL concerning the manner, degree and extent of such public disclosure. The Subcontractor further agrees to be bound by the decision of JPL in such matters.

REQUIREMENTS FOR REGISTRATION OF DESIGNERS

[A - E – 09/04] [FAR 52.236-25 – 06/03]

(Work performed outside the United States is exempt from the requirements of this Article.)

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in the State of California.

RESPONSIBILITY OF THE ARCHITECT-ENGINEER SUBCONTRACTOR

[A - E – 09/04] [FAR 52.236-23 – 04/84]

- (a) The Subcontractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Subcontractor under this Subcontract. The Subcontractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither JPL's review, approval or acceptance of, nor payment for, the services required under this Subcontract shall be construed to operate as a waiver of any rights under this Subcontract or of any cause of action arising out of the performance of this Subcontract, and the Subcontractor shall be and remain liable to the Institute in accordance with applicable law for all damages to the Institute or the Government caused by the Subcontractor's negligent performance of any of the services furnished under this Subcontract.
- (c) The rights and remedies of the Institute provided for under this Subcontract are in addition to any other rights and remedies provided by law.
- (d) If the Subcontractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.225- 13 – 07/00]

INCORPORATE BY REFERENCE FAR 52.225- 13. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES.

SMALL BUSINESS SUBCONTRACTING PLAN

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 109/104] [FAR 52.219-9 – 041/0802]

(A – E)

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$550,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) ~~If there will be any Lower-tier Subcontracting under this Subcontract and the basic or any modification exceeds \$550,000 (\$1,000,000 for construction of any public facility), the Subcontractor agrees to submit for JPL approval a Lower-tier Subcontracting Plan (Plan) that separately addresses Lower-tier Subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, women-owned small business concerns and Historically Black Colleges and Universities and Minority Institutions. The Subcontractor further agrees to provide a written update to the Plan for every modification exceeding \$550,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Subcontracting Plan Requirements." The approved Plan and approved updates will be deemed incorporated into this Subcontract.~~ there will be any Lower-tier Subcontracting under this Subcontract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction of any public facility), the Subcontractor agrees to submit for JPL approval a Lower-tier Subcontracting Plan (Plan) that separately addresses Lower-tier Subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. The Subcontractor further agrees to provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Subcontracting Plan." The approved Plan and approved updates will be deemed incorporated into this Subcontract.
- (b) ~~If a Plan is required, an Individual Subcontract Report (ISR) and the Summary Subcontract Report (SSR) are deliverables which must be submitted by the Subcontractor to the JPL Subcontracts Manager in accordance with the instructions of FAR 52.219(l). a Plan is required under this Subcontract, SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," are deliverables, which must be submitted by the Subcontractor to the JPL Subcontracts Manager in accordance with the instructions on the forms.~~
- (c) It is understood and agreed that the failure of the Subcontractor to comply in good faith with the Article of this Subcontract entitled "Utilization of ~~Small, Small Disadvantaged, and Women-Owned~~ Small Business Concerns," or with any Plan required to be included in this Subcontract, shall be a material breach of this Subcontract.

SMALL BUSINESS SUBCONTRACTING REPORTING

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 109/104] [NFS 1852.219-75 – 05/99]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$550,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) ~~The Subcontractor shall submit the Summary Subcontract Report (SSR) semiannually for the reporting periods specified in the Subcontract. All other instructions remain in effect. Subcontractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.~~
- (b) The Subcontractor shall include this clause in all Lower-tier Subcontracts that include the Article titled "Small Business Subcontracting Plan." ([FAR 52.219-9](#)).

STOP WORK ORDER

[CT, FP-NR&D, FP-R&D, A - E – 09/04] [FAR 52.242-15 - 08/89]

- (a) JPL may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this Subcontract for a period of 90 days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this Article. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, JPL shall either:
- (1) Cancel the stop work order; or

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- (2) Terminate the work covered by such order either for convenience of the Institute or the Government or, if appropriate, for default.
- (b) If a stop work order issued under this Article is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. JPL shall make an equitable adjustment in the delivery schedule, the Subcontract amount, and in any other provisions of the Subcontract that may be affected, and the Subcontract shall be modified, in writing, accordingly, if:
- (1) The stop work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this Subcontract; and
 - (2) The Subcontractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; provided that, if JPL decides the facts justify the action, it may receive and act upon the claim asserted at any time before final payment under this Subcontract.
- (c) If a stop work order is not canceled and the work covered by the order is terminated for the convenience of the Institute or the Government, JPL shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- (d) If a stop work order is not canceled and the work covered by the order is terminated for default, JPL shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 22.305 - 07/95; 52.222-4 - 09/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This provision is not applicable to Subcontracts for supplies, materials, or articles ordinarily available in the open market, Subcontracts for transportation by land, air, or water, or for the transmission of intelligence, Subcontracts of \$100,000 or less, Subcontracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and Subcontracts (or portions of Subcontracts) for supplies in connection with which any required services are merely incidental to the Subcontract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), Subcontracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Act, and Subcontracts for commercial items.
- (b) FAR clause 52.222-4 (Sept 2000) is hereby incorporated by reference in total, except that:
- (1) The words "JPL Subcontracts Manager or JPL's Contracting Officer" shall be substituted for the words "Contracting Officer" wherever they appear;
 - (2) The word "Subcontractor" shall be substituted for the words "Prime Contractor" wherever they appear; and
 - (3) The words "with JPL" shall be substituted for the words "Federal Subcontract with the same Prime contractor" wherever they appear.

SUBCONTRACTOR AND LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A - E CREI- 09/04] [FAR 15.403-4 - 10/06; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Subcontract or any modification exceeds \$650,000.)

- (a) Subcontractor Cost or Pricing Data.
- (1) Whenever the negotiated price of the basic Subcontract, or the negotiated price of any change, or other modification to this Subcontract is expected to exceed \$650,000, the Subcontractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the Subcontract is for a commercial item). Whenever certified cost or pricing data are required, the Subcontractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

(A)

- (i) Basic Subcontracts. In lieu of submitting cost or pricing data for the basic Subcontract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
- (ii) Subcontract Modifications. In lieu of submitting cost or pricing data for modifications under this Subcontract, for price adjustments expected to exceed \$650,000 on the date of the agreement on price or the date of the award, whichever is later, the Subcontractor may submit a written request for exception by submitting the information described under paragraph (B), below.
- (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(B) The relevant part of the following information is to be submitted when requesting an exception:

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
 - (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
 - a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government contract, proof that an exception has been granted for the schedule item.
 - (iii) Information on modifications of Subcontracts or Lower-tier Subcontracts for commercial items. If (i) the original Subcontract or Lower-tier Subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a Subcontract or Lower-tier Subcontract for a commercial item; and (ii) the modification (to the Subcontract or Lower-tier Subcontract) is not exempted based on one of these exceptions, then the Subcontractor may provide information to establish that the modification would not change the Subcontract or Lower-tier Subcontract from a Subcontract or Lower-tier Subcontract for the acquisition of a commercial item to a Subcontract or Lower-tier Subcontract for the acquisition of an item other than a commercial item.
- (C) The Offeror/Subcontractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Subcontractor's determination of the prices to be offered in the catalog or marketplace.

(b) Lower-tier Subcontractor Cost or Pricing Data.

- (1) Before awarding any Lower-tier Subcontract expected to exceed \$650,000 when entered into, or before pricing any Lower-tier Subcontract modification involving a pricing adjustment expected to exceed \$650,000, the Subcontractor shall require the Lower-tier Subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the Lower-tier Subcontract or modification is eligible for an exception listed in paragraph (a), above.

- (2) The requirement for obtaining certified cost or pricing data with respect to any Lower-tier Subcontract change or other modification does not apply to any Lower-tier Subcontract change or modification, at any tier, where this Subcontract is a firm fixed-price or firm fixed-price with escalation Subcontract unless such change or other modification results from a Subcontract change or other modification to this Subcontract, nor does it apply to a Lower-tier Subcontract change or other modification, at any tier, where this Subcontract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Subcontract.
- (3) The Subcontractor shall require the Lower-tier Subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the Lower-tier Subcontract or Lower-tier Subcontract modification.
- (4) In each Lower-tier Subcontract that exceeds \$650,000 when entered into, the Subcontractor shall insert either:
- (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the Lower-tier Subcontract; or
 - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Subcontract, or any cost reimbursable under this Subcontract, was increased by any significant amount because (i) the Subcontractor or a Lower-tier Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a Lower-tier Subcontractor or prospective Lower-tier Subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Subcontract shall be modified to reflect the reduction.
- (2) Any reduction in the Subcontract price under paragraph (1) above due to defective data from a prospective Lower-tier Subcontractor that was not subsequently awarded the Lower-tier Subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual Lower-tier Subcontract or (ii) the actual cost to the Subcontractor, if there was no Lower-tier Subcontract, was less than the prospective Lower-tier Subcontract cost estimate submitted by the Subcontractor; provided, that the actual Lower-tier Subcontract price was not itself affected by defective cost or pricing data.
- (3)
- (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
 - (i) The Subcontractor or Lower-tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Subcontractor or Lower-tier Subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Subcontract was based on an agreement about the total cost of the Subcontract and there was no agreement about the cost of each item procured under the Subcontract.
 - (iv) The Subcontractor or Lower-tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.
 - (B)
 - (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Subcontract price reduction if:

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- a. The Subcontractor certifies to the Contracting Officer that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - b. The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
- a. The understated data were known by the Subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data or
 - b. The Government proves that the facts demonstrate that the Subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the Subcontract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Subcontractor's defective pricing including:
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - ~~(2)~~ A penalty equal to the amount of the overpayment, if the Subcontractor or Lower-tier Subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(2)

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TECHNICAL DIRECTION

[FP-NR&D, LH/T&M, T&MC, FPC, A - E, FP-R&D, RSA - 09/04] [NFS 1852.242-70 - 09/03]

- (a) Performance of the work under this Subcontract is subject to the written technical direction of the Contract Technical Manager (CTM). "Technical direction" means a directive to the Subcontractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Subcontractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements of this Subcontract.
- (b) The CTM does not have the authority to, and shall not, issue any instruction purporting to be technical direction that--
 - (1) Constitutes an assignment of additional work outside the statement of work;
 - (2) Constitutes a change as defined in the changes clause;
 - (3) Constitutes a basis for any increase or decrease in the total estimated Subcontract cost, the fixed fee (if any), or the time required for Subcontract performance;
 - (4) Changes any of the expressed terms, conditions, or specifications of the Subcontract; or
 - (5) Interferes with the Subcontractor's rights to perform the terms and conditions of the Subcontract.
- (c) All technical direction shall be issued in writing by the CTM.
- (d) The Subcontractor shall proceed promptly with the performance of technical direction duly issued by the CTM in the manner prescribed by this clause and within the CTM's authority. If, in the Subcontractor's opinion, any instruction or direction by the CTM falls within any of the categories defined in paragraph (b) of this clause, the Subcontractor shall not proceed but shall notify the JPL Subcontracts Manager in writing within 5 working days after receiving it and shall request the Subcontracts Manager to take action as described in this clause. Upon receiving this notification, the Subcontracts Manager shall either issue an appropriate Subcontract modification within a reasonable time or advise the Subcontractor in writing within 30 days that the instruction or direction is--
 - (1) Rescinded in its entirety; or

- (2) Within the requirements of the Subcontract and does not constitute a change under the changes clause of the Subcontract, and that the Subcontractor should proceed promptly with its performance.
- (e) Any action(s) taken by the Subcontractor in response to any direction given by any person other than the Subcontracts Manager or the CTM shall be at the Subcontractor's risk.

TERMINATION FOR ARCHITECTS AND ENGINEERS

[A - E - 09/04] [FAR 52.249-7 - 04/84]

- (a) JPL may terminate this Subcontract in whole or, from time to time, in part, for the convenience of the Government or the Institute or because of the failure of the Subcontractor to fulfill the Subcontract obligations. JPL shall terminate by delivering to the Subcontractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Subcontractor shall:
- (1) Immediately discontinue all services affected (unless the notice directs otherwise); and
 - (2) Deliver to JPL all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Subcontract, whether completed or in process.
- (b) If the termination is for the convenience of the Institute, an equitable adjustment in the Subcontract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- (c) If the termination is for failure of the Subcontractor to fulfill the Subcontract obligations, JPL may complete the work by Subcontract or otherwise and the Subcontractor shall be liable to the Institute for any additional cost for completion of the work.
- (d) If, after termination for failure to fulfill Subcontract obligations, it is determined that the Subcontractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Institute.

The rights and remedies of the Institute provided in this Article are in addition to any other rights and remedies provided by law or under this Subcontract.

TOXIC CHEMICAL RELEASE REPORTING

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.223-14 - 10/00]

(This Article is applicable to all Subcontracts where the value of the Subcontract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Subcontract, the Subcontractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 08/01] [NFS 1852.227-87 - 04/89]

(This Article applies to Subcontracts and Lower-tier Subcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data that are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station Subcontractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The Subcontractor agrees, when specifically directed in writing by the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract.

- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Subcontractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Subcontractor or any Lower-tier Subcontractors as set forth in the "Rights in Data" Article of this Subcontract, nor the protection of any proprietary technical data that may be available to the Subcontractor or any Lower-tier Subcontractor under that Article.

~~(e)~~ The Subcontractor agrees to include this Article, including this paragraph (e), in all Lower-tier Subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

(e)

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UTILIZATION OF SMALL BUSINESS CONCERNS

[A-E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04] [FAR 52.219-8 – 10/00]

(This Article is applicable when the Subcontract amount is expected to be over \$100,000, unless (i) a personal services Subcontract is contemplated, (ii) a commercial items or services Subcontract, or (iii) the Subcontract together with all its First-tier Subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

Incorporate by reference FAR 52.219-8, Utilization of Small Business Concerns.

